



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
We make Indiana a cleaner, healthier place to live.

Frank O'Bannon
Governor

Lori F. Kaplan
Commissioner

100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015
(317) 232-8603
(800) 451-6027
www.in.gov/idem

To: Interested Persons

From: Lori F. Kaplan
Commissioner

Date: January 29, 2003

Subject: Changes to Environmental Rulemaking Processes and Procedures

I appreciate the efforts of all who participated in discussions on December 12, 2002, and January 24, 2003, regarding the IDEM and environmental board rulemaking processes and procedures.

IDEM is committed to implementing the attached list of **Changes to IDEM Processes and Procedures** for environmental rulemakings. IDEM will also begin discussing the attached **Changes to Board Processes and Procedures for Consideration by the Boards** with the Air Pollution Control Board, Water Pollution Control Board, the Solid Waste Management Board and the Financial Advisory Board members at their meetings beginning in March.

I am confident that we can continue to work with all of you to continuously improve the public environmental rulemaking process. We will schedule a followup meeting in May to discuss progress on these changes and to invite further suggestions.

Changes to IDEM Processes and Procedures

1. Rule Workgroup Processes

IDEM will work with interested persons to establish an appropriate workgroup process for every rulemaking action that includes significant policy options prior to initiation of first notice of rulemaking. The first notice of rulemaking will also solicit interest in participating in a workgroup process if appropriate. Some rulemakings do not include sufficient policy options or public interest to warrant creation of a workgroup.

2. First Notices of Rulemaking

IDEM will increase the amount of information in the first notice of rulemaking by generally providing a listing of alternatives and a detailed statement of the issues to be addressed. Each notice will also describe efforts to date in establishing a process for public input in drafting a rule and solicit interest in participating in a process. IDEM will create several “templates” for first-notices of rulemaking. Each template will represent different situations (e.g., broad public policy options are available, a few public policy options are available, policy options are very limited). IDEM will inform the Board of any initiation of a first notice of rulemaking.

3. IDEM Point-Person on Rulemakings

IDEM will establish a point person for each significant rulemaking to facilitate providing desired information to the public.

4. Distribution of Board Materials

Board materials will be distributed to the Boards and Board mailing lists at least two weeks in advance of a scheduled Board meeting. IDEM will NOT circulate any revisions to recommended rule language to the Board subsequent to the mailout of Board materials. The Board package will also include proposed rule language and rationale provided by the general public that are requested to be included as part of the materials distributed to the Board, if the material is made available sufficiently in advance of mailout and is available electronically. If the materials are not available electronically, IDEM will provide a listing of board member addresses to the requestor.

5. Rulemakings to Incorporate Federal Requirements

IDEM will include specific information on provisions within rules presented to the Boards for preliminary or final adoption that are significantly different than a corresponding federal requirement. Information will include the rationale and potential costs for such a provision.

6. Workgroup Reports

IDEM will work with each rule workgroup as practical to present a summary report of the workgroup discussions, including any consensus recommendations and specific stakeholder positions, to the respective environmental boards in advance of public hearings for preliminary

or final adoption. The report will also summarize known comments/information from the U.S. Environmental Protection Agency and a comparison with other states, if appropriate.

7. Fiscal Analyses

For rulemakings requiring a fiscal analysis by the Legislative Services Agency, IDEM will provide available information on the fiscal impact of a particular rulemaking to the Boards at preliminary adoption in advance of LSA's fiscal analysis at final adoption. Similarly, IDEM will provide available information on the environmental benefits and/or health impacts of the proposed rulemaking.

8. Rulemaking Website

IDEM will establish an Environmental Rulemaking page on the IDEM website which will house information on all pending and legislatively mandated rulemakings of the environmental boards and active non-rule policy documents. Information will include the current schedules for rulemaking for all pending rules (including all statutorily required rulemakings), notices of public hearings and informal public meetings, final rules that are adopted but not yet effective, the purpose of the rulemaking, current status, a list of all published non-rule policy documents, etc. IDEM will also explore and work toward allowance of submittal of formal written comments electronically on individual rules.

9. Rulemaking Files

IDEM will work to ensure a consistently accessible, complete and organized filing system for ongoing and past rulemakings for easier access to the public of rulemaking documents.

10. Non-Rule Policy Documents

IDEM will circulate draft non-rule policy documents at least 45 days in advance to interested persons (and include on website) prior to presentation to the respective Boards. IDEM recognizes the role of the Boards in establishing environmental policy and will seek input from the Boards and generally work with the Boards to gain as much consensus as practical on the content of a non-rule policy document prior to its implementation.

Non-rule policy documents will be used to explain and interpret rules, not to establish new requirements. Non-rule policy documents will avoid the use of mandatory language such as "must" or "shall", except where stating a direct regulatory requirement.

Changes to Board Processes and Procedures for Consideration by the Boards

1. Board Involvement in Rulemakings

Upon initiation of a new rulemaking, IDEM will schedule a discussion on the new rulemaking with the Board and receive any direction by the Board to IDEM on the rulemaking and on the Board's involvement in the processes leading up to public hearings on the rule. Options include but are not limited to: participation in IDEM workgroups, periodic updates from

IDEM and/or interested parties, specific technical or other presentations to the Board from IDEM or other parties, participation in specific fact-finding activities, requesting specific technical or other materials, etc.

IDEM will also periodically provide a list of current and anticipated rulemakings and discuss priorities and schedules with the Board.

2. Board Action on Amendments

The Boards will specifically discuss any amendments to rules presented for preliminary or final adoption that were not included in the materials distributed to the Board and the public in advance and will determine whether the amendments require further public discussion prior to action.

3. IDEM Staff at Board Hearings

IDEM will work with each Board to establish appropriate logistics for Board meetings to ensure fair access by the Board to members of the public and to IDEM staff. The logistics should ensure that IDEM staff do not or are not perceived to have undue access to the Board during their policy deliberations.

4. Program Information to the Boards

IDEM staff will present a summary of relevant program information (to be determined by the interest of the Boards and the practicality of preparation of material by IDEM) at each Board meeting. IDEM may also provide a summary of adjudicatory actions that are relevant to implementation of environmental rules and policies.

5. Board Procedural Manual

IDEM will work with the Board and Board Counsel to prepare a procedural manual, including a clear list of options for Board actions on rulemakings in a variety of different situations.

6. Action on Non-Rule Policy Documents

The Boards may discuss non-rule policy documents presented to the Board and provide specific or general directions to IDEM staff, including recommending that a policy be adopted as a rule.

7. Coordination Between Environmental Boards

The Air Pollution Control Board, Water Pollution Control Board, Solid Waste Management Board and Financial Assurance Board Chairs and interested members may meet periodically (twice a year). Discussion could focus on ongoing rulemakings, Board operational practices (e.g., Board Procedural Manual), recent process and procedure problems and highlights and other areas of common interest.